IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/07/2003

CORAM

THE HON'BLE MR.JUSTICE N.V.BALASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE AR.RAMALINGAM

A.S.No.482 of 1989

Palanichamy ..... Appellant

-Vs-

1. Rajalakshmi
2. Minor Sivashanmugham
3. Minor Sumathi
(RR 2 and 3 rep. By guardian R1)

4. Subramaniam
5. Periasamy
6. Chinnuammal @ Rakkammal
7. Kaliammal
8. Palaniammal
9. Nallammal
10. Ramasamy Gounder
11. Karuppannan ..... Respondents

Appeal against the judgment and decree dated 4.2.1988 in O.S.No.87 of 1986 on the file of the Sub Court, Namakkal.

!For appellant : Mr.C.S.Krishnamoorthy

^For RR 1 to 3 : Mr.N.Varadarajan for
Mr.T.K.Subba Rao

For R8 : Mr.N.Manokaran

For other
respondents : No appearance.

:JUDGMENT

AR.RAMALINGAM,J.

This appeal has been filed by the 8th defendant viz., one Palanisamy against the finding given under issue No.8 in the judgment rendered by the Sub Judge, Namakkal in O.S.No.87 of 1986 on 4.2.1988.

2. As per the plaint of the plaintiffs viz., Rajalakshmi, Minor Sivashanmugam and Minor Sumathi respectively being the wife, son and daughter of the first defendant Subramaniam the prayer is for maintenance and partition of plaint schedule properties. The suit was resisted by all the defendants and particularly the appellant/8th defendant has contested the suit by saying that he has purchased 59 cents within the extent of one acre 18 cents in Survey No.81/1C shown as item No.7 of the plaint schedule for valuable consideration of Rs.30,000/= through a registered sale deed dated 2.9.1976 from defendants 1 to 3 who are none other than the husband, brother in law and mother in law of the first plaintiff Rajalakshmi and that he is the bona fide purchaser for valuable consideration and particularly his purchase is true and bona fide one supported by his conduct of discharging the antecedent debts incurred not only by the first defendant but also by the second defendant for the purpose of family benefit and improvement of landed properties of the joint family.

3. However, this stand of the 8th defendant was not accepted by the Sub Judge, Namakkal and he gave the finding under issue No.8 to the effect that the purchase made by the 8th defendant was not true, valid and binding upon the plaintiffs and particularly the share of the minor second plaintiff. Aggrieved against such a finding, this appeal has been preferred by the appellant/8th defendant.

4. The only point for consideration in this appeal is whether the sale deed executed by defendants 1 to 3 in favour of the appellant/8th defendant covered by Ex.B8 is true, valid and binding upon the plaintiffs.

5. Fortunately or unfortunately, the other defendants against whom findings have been given have not come forward with any appeal. However, this appeal is confined so far as it relates to item 7 of the plaint schedule covered by Ex.B8 in favour of the appellant/8th defendant.

6. On careful perusal of Ex.B8 sale deed, we are able to see that the same is a registered document which was registered on 2.9.1976 itself and it has been executed not only by the first defendant but also the second defendant Periyasamy and their mother the third defendant Chinnuammal alias Rakkammal. Even as per the pleadings and evidence of PW1 viz., Rajalakshmi, it is clear that the dispute between herself and her husband the first defendant arose only subsequent to the year 1976. In this context, it has to be pointed out that if really the husband of the first plaintiff viz., the first defendant was not alright in his activities morally or otherwise, the other joint owners or sharers viz., the second defendant and the third defendant could not have executed such a sale deed in favour of the 8th defendant along with the first defendant. On the other hand, it has to be pointed out that all the three have jointly executed the sale deed only for the purpose of discharging the debts incurred by the first defendant as a joint family member and the joint debt incurred by the second defendant also and thereby such a sale deed cannot be easily viewed as if it is a document out of connivance among defendants 1 to 3 with ulterior motive of avoiding the rights of the plaintiffs upon the said property. Moreover, if the recitals and details of the consideration for Ex.B8 are looked into, we are able to see that the said document came into existence only for the purpose of discharging

the pro note debt due to one Veerappa Gounder (DW4) dated 1 6.12.1974 for Rs.5000/=, pro note debt due to the 8th defendant, purchaser himself for Rs.10 ,000/= dated 28.3.1976, pro note debt due to one Kuzhanthai Paian (DW5) for Rs.1500/= and the pro note debt due to one Palaniappa Gounder (DW8) for Rs.2000/= dated 17.5.1975. Further, we are able to see that those debts have been discharged by the 8th defendant himself and evidencing such discharges, the discharged pro notes have been filed and marked as Exs.B10 to B13. Further, defendants 1 to 3 have also received a sum of Rs.5,000/=, Rs.4500/= and Rs.2000/= in cash before the Sub Registrar as evidenced by the endorsement made by the Sub Registrar in Ex.B8 itself. Therefore, it is highly unbelievable and improbable to contend that Ex.B8 is a document created with ulterior motive to avoid the rights of the plaintiffs. On the other hand, Ex.B8 has been clearly proved regarding its due execution for valuable consideration as well as the purpose of execution for discharging the antecedent debts and for the purpose of improving the landed properties and so on. There is no reason to suspect or disbelieve the evidence of the 8th defendant as DW3 and the evidence of D.Ws.4, 5 and 8 followed by Ex.B8 and the said discharged pro notes.

7. Therefore, it is very easy for anybody like the plaintiffs to attribute any ulterior motive for any document for the convenience of filing suit for partition, etc. In this case, Ex.B8 is a document for valuable consideration entered into by a bona fide purchaser viz., the 8th defendant. So, the observation and view expressed by the Sub Judge, Namakkal for the purpose of giving finding against Ex.B8, in our view, are not correct and justified. Consequently, such a finding has to be set aside.

8. Accordingly, we are of the view that there are acceptable and sufficient grounds to allow this appeal and thereby the appeal is allowed and the finding of the Sub Judge, Namakkal so far as it relates to Ex.B8 document (standing in favour of the appellant/8th defendant) is set aside. No costs.

Index: Yes
Internet: Yes

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To

1. The Subordinate Judge,
Namakkal. (with records)

2. The Record Keeper,
V.R. Section,
High Court, Chennai.